



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 09, 2023

IN THE MATTER OF:

Appeal Board No. 627575

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective March 1, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by SAFETY BUILDING CLEANING INC prior to March 1, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed January 18, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant contends that he last worked on February 28, 2022 and was called by the Human Resources Director around

7:30 PM that same day. The Human Resources Director, Ms. Esperon, contends that the claimant last worked on February 27, 2022 and that she called him around mid-morning or early afternoon on February 28, 2022. The Board has determined that further testimony and evidence should be taken in order to assess the credibility of the parties. In this regard, the parties should produce telephone records for the period which includes February 27, 2022 and February 28, 2022. In addition, the parties shall be questioned regarding the claimant's work schedule for those days and the parties should produce any

evidence they possess or may obtain regarding his schedule and his work on those days.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER